



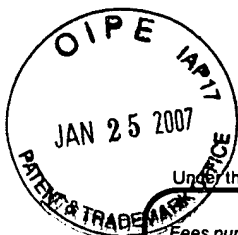
<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)		Application Number	09/207,634
		Filing Date	12/09/1998
		First Named Inventor	Joseph J. Berke
		Art Unit	3618
		Examiner Name	Bridget Avery
		Attorney Docket Number	1374-098
Total Number of Pages in This Submission			

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Alex Rhodes, P.C.	
Signature		
Printed name	Alex Rhodes	
Date	January 22, 2007	Reg. No. 26,797

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	Alex Rhodes	Date	01/22/2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

## FEE TRANSMITTAL For FY 2006

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)**250.00**

### Complete if Known

Application Number	09/207,634
Filing Date	12/09/1998
First Named Inventor	Joseph J. Berke
Examiner Name	Bridget Avery
Art Unit	3618
Attorney Docket No.	1374-098

### METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):

☒ Deposit Account Deposit Account Number: **18-1166** Deposit Account Name: **Alex Rhodes**

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee  
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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### FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

#### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

#### 2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
<b>Total Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 20 or HP =	x	=
HP = highest number of total claims paid for, if greater than 20.		
<b>Indep. Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 3 or HP =	x	=
HP = highest number of independent claims paid for, if greater than 3.		

#### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

**Total Sheets** - 100 = **Extra Sheets** / 50 = **Number of each additional 50 or fraction thereof** x **Fee (\$)** = **Fee Paid (\$)**

#### 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): **Petition to Revive**

**Fees Paid (\$)**

**250.00**

#### SUBMITTED BY

Signature	<i>Alex Rhodes</i>	Registration No. (Attorney/Agent)	26,797	Telephone	248-669-0678
Name (Print/Type)	Alex Rhodes			Date	01/22/2007

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



*PAE*  
*FW*  
*STW*

PATENTS  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph J. Berke et al.

Atty Docket No. 1374-098

Serial No. 09/207,634

Group Art Unit: 3618

Filed: Dec. 9, 1998

Examiner: Bridget Avery

For: BAG CARRIER

Confirmation No. 7083

Customer No. 26824

**PETITION UNDER 37 CFR 1.137(a)  
TO REVIVE AN ABANDONED APPLICATION**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir,

This is a Petition under 37 CFR 1.137(a) to revive an abandoned application on the grounds that the delay was unavoidable.

Enclosed are:

- (1) Decision of the Patent Office Board of Patent Appeals and Interferences dated May 12, 2004.
- (2) Change of Correspondence Address Form, dated June 21, 2004
- (3) Return Receipt Post Card date stamped June 23, 2004
- (4) Examiner's Office Action, re-Opening Prosecution, dated August 31, 2004

(5) Applicant's Response (Amendment) to Examiner's Office Action dated November 30, 2004.

(6) Return Receipt Post Card date stamped December 2, 2004.

The facts in support of this Petition are as follows:

On May 12, 2004, the Patent Office Board of Appeals issued an Opinion (Exhibit 1) which reversed all of the Examiner's rejections of the claims on Appeal.

On June 21, 2004, Applicant's attorney mailed a Change of Correspondence Address Form to the Patent Office (Exhibit 2) requesting the Patent Office to change the correspondence address in the subject application (Application Serial No. 09/207,634) to 50168 Pontiac Trail, Unit No. 9, Wixom, Michigan 48393-2019. The correct Application Number, Art Unit and Examiner's name were shown on the form. As shown in the copy of the date stamped Return Receipt Post Card, the Change of Correspondence Address form was received at the Patent Office on June 23, 2004 (Exhibit 3).

In August, 2004, the Examiner re-opened prosecution by forwarding an office action dated August 31, 2004 (Exhibit 4).

On November 30, 2004, Applicant's attorney mailed a timely response (Amendment) to the Examiner's office action (Exhibit 5). As shown in the copy of the date stamped Return Receipt Post Card, the Response was received at the Patent Office on Dec. 2, 2004 (Exhibit 6). The new correspondence address of Applicant's attorney was included in the response (Exhibit 5).

Unbeknown to Applicant or his attorney, a final action to Applicant's response was mailed to the wrong correspondence address of Applicant's attorney.

On January 16, 2007, pursuant to a telephone call, Applicant's attorney was informed by Supervisor Patent Examiner Christopher P. Ellis (Group 3600), that the Examiner's final action was returned to the Patent Office and the application was subsequently abandoned because of "a failure to reply". Neither the Examiner nor the Patent Office contacted Applicant's attorney after the Examiner's final action was returned. Nor was a copy of a Notice of Abandonment received by Applicant's attorney.

### **Remarks/Arguments**

This matter is clearly a case of error by the Patent Office, requiring the Patent Office to set aside the abandonment and to re-open the prosecution. The U.S. Patent Office was notified on two occasions of Applicant's attorney's new correspondence address. On June 21, 2004, Applicant's attorney mailed a Change of Correspondence Address Form to the Patent Office (Exhibit 2). The Change of Correspondence Address Form was directed to Group 3618 and Examiner Bridget Avery (see Exhibit 1). Return Receipt Post Card (Exhibit 2) shows that the Change of Correspondence Address Form was received on June 23, 2004.

Five months after Applicant's attorney mailed the Change of Correspondence Address Form, Applicant's attorney mailed a response to the Examiner's initial office action (Exhibit 5). Below the signature of Applicant's attorney was the new address shown in the Change of Correspondence Address Form. As shown in the copy of the date stamped Return Receipt Post Card, the Response to the Examiner's Action was received at the Patent Office on December 2, 2004 (Exhibit 6).

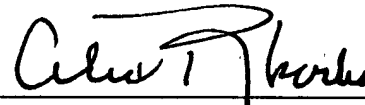
Reference is made to the January 16, 2007 telephone conference between Applicant's attorney and Group 3600 Supervisor Patent Examiner Christopher P. Ellis. Examiner Ellis informed Applicant's attorney that the Patent Office held that the application was abandoned on December 14, 2005, i.e. 17 months after the filing of the Change of Correspondence Address Form and 12 months after the response to the Examiner's office action – two occasions in which the Patent Office was notified of the attorney's new address.

Despite the two notices, the Patent Office failed to provide Applicant's attorney with either the Examiner's final office action or a Notice of Abandonment.

In view of the above facts, it is respectfully requested that the Group Director:

1. hold that the abandonment of the application was unavoidable;
2. set aside the abandonment; and
3. re-open prosecution of the application and forward to Applicant's attorney the Examiner's final office action.

Respectfully submitted,



Alex Rhodes, Reg. No. 26,797  
Attorney for Applicant  
50168 Pontiac Trail, Unit No. 9  
Wixom, MI 48393  
Tel: (248) 669-0678  
Fax: (248) 669-3694

Dated: January 22, 2007

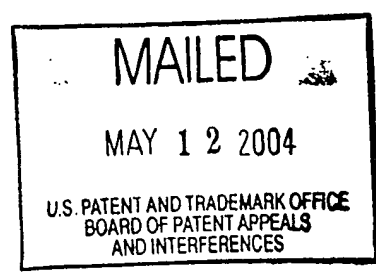
*Mail*



The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JOSEPH J. BERKE,  
and CHARLES T. MICHAEL

Appeal No. 2003-0252  
Application No. 09/207,634

ON BRIEF

Before COHEN, ABRAMS, and STAAB, Administrative Patent Judges.  
STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 5-10, 12-14 and 20-28. Claim 11, the only other claim currently pending in the application, has been allowed. On page 2 of the answer (Paper No. 18), the examiner states that "[t]he prior art rejection of claim 13 is being withdrawn." Accordingly, the appeal as to claim 13 is dismissed, leaving for our consideration only the rejections of claim 5-10, 12, 14, and 20-28.

EXHIBIT 1

Appeal No. 2003-0252  
Application No. 09/207,634

Appellants' invention pertains to a wheeled cart having a removable carrier for transporting a closed bag filled with loose or granular material. A further understanding of the invention can be derived from a reading of exemplary claim 5, which reads as follows:

5. In combination with a cart, a carrier mounted on an upper portion of said cart for transporting a closed bag or sack, said carrier having a pair of elongated jaws, and a means for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, and a handle attached to at least one of said jaws.

The references relied upon by the examiner in the final rejection are:

Smith	4,044,784	Aug. 30, 1977
Arias et al.	4,261,447	Apr. 14, 1981
Brown	5,301,393	Apr. 12, 1994
White	5,621,950	Apr. 22, 1997
Faraj	5,697,624	Dec. 16, 1997

The following rejections under 35 U.S.C. § 103(a) are before us for review:

(1) claims 5-8, 10, 20, 21 and 24-28, rejected as being unpatentable over Faraj in view of White;

(2) claim 9, rejected as being unpatentable over Faraj in view of White, and further in view of Arias;



Appeal No. 2003-0252  
Application No. 09/207,634

(3) claims 12 and 14, rejected as being unpatentable over Faraj in view of White, and further in view of Smith;

(4) claims 5-8, 10 and 20-28, rejected as being unpatentable over Faraj in view of Brown;

(5) claim 9, rejected as being unpatentable over Faraj in view of Brown, and further in view of Arias; and

(6) claims 12 and 14, rejected as being unpatentable over Faraj in view of Brown, and further in view of Smith.

Reference is made to appellants' second amended brief (Paper No. 17) and to the examiner's answer (Paper No. 18) for the respective positions of appellants and the examiner regarding the merits of these rejections.

#### Discussion

I. The 35 U.S.C. § 103(a) rejection of claims 5-8, 10, 20, 21 and 24-28 as being unpatentable over Faraj in view of White (rejection (1)) and claims 5-8, 10 and 20-28 as being unpatentable over Faraj in view of Brown (rejection (4))

Faraj, the examiner's primary reference in each of these rejections, is directed to a cart for transporting bags, cartons and other containers of groceries or other items from the point of purchase (abstract). The cart comprises a support member 12 having a handle 24 attached to a top end portion 14 of the support member,

Appeal No. 2003-0252  
Application No. 09/207,634

and a wheel assembly 20, which may include either a single wheel or dual wheels (column 2, lines 32-34), mounted on a bottom end portion 16 of the support member. A plurality of U-shaped or J-shaped hooks 26 are located on a middle portion 18 of the support member, and are positioned for receiving a handle or handles of a first container 28, such a bag (column 2, lines 44-48). A bracket 30 is hingedly connected to the middle portion below the plurality of hooks 26 for supporting a second container 32, such as a carton of soft drinks or bag of pet food (column 2, lines 56-60). In addition, a storage compartment 34 is provided on the support member 12 for storing reusable bags.

As implicitly conceded by the examiner (see pages 4 and 6-7 in the answer), the cart disclosed by Faraj does not include a carrier mounted on an upper portion of the cart having a pair of elongated jaws, and a means for clamping the jaws to and releasing the jaws from an upper portion of a closed bag or sack, as called for in one form or another in each of the independent claims 5, 14, 24 and 28 on appeal. To cure this shortcoming, the examiner turns alternatively to White (rejection (1)) and Brown (rejection (4)).

White pertains to a spring-loaded paper clip having a pair of plate elements 12, 14 hingedly connected together and provided with raised projections 38 to improve gripping force so that larger

quantities of paper may be held together without shifting or slipping. An elongated member 32 having a closed loop 36 is affixed to the back of one of the plate elements to facilitate fastening the paper clip to a vertical support, such as a wall or bulletin board. Brown discloses a spring biased clip comprising a pair of clamping elements 12, 16 hingedly connected together in combination with a spring 32. The clamping elements are provided with clamping edges 18, 20 to concentrate the application of force against the sheet material being clamped together. The clip of Brown may be used as a paper clip or bag clip. When used as a bag clip, the upper edges of, for example, a snack bag that has been opened are folded over a couple of times and then the clip is applied to ensure a good air tight seal (column 3, lines 55-62).

In proposing to combine Faraj with either White or Brown to reject independent claims 5, 14, 24 and 28, the examiner concluded that it would have been obvious, based on the teachings of White or Brown, to combine the bag carrier (i.e., clip) of one or the other of the secondary references with the cart of Faraj "to facilitate ease in transporting bags without handles" (answer, pages 4 and 7).

In our view, the disparate teachings of Faraj and either White or Brown would not have suggested the combinations advanced by the examiner, which presumably involves incorporating the clip of White

or Brown into the carrier of Faraj in a manner that would permit the incorporated clip to engage and close the mouth of a bag being transported by Faraj's carrier. In particular, there would appear to be no reason, aside from the hindsight knowledge first gleaned from reading appellants' disclosure, for incorporating the clip of either White or Brown into the carrier of Faraj "to facilitate ease in transporting bags without handles" as proposed by the examiner, since Faraj provides separate and distinct schemes for handling bags with and without handles. In this regard, note column 2, lines 44-48 ("A plurality of U-shaped or J-shaped hooks 26 are located on the middle portion 18 . . . for receiving a *handle or handles* of a first container, such as a bag, and supporting the container 28" (emphasis added)) and column 2, lines 56-60 ("A bracket 30 hingedly connected to the middle portion 18 . . . is provided for supporting a second container 32, such as a . . . bag of pet food or other container *without handles*" (emphasis added)).

The mere fact that the prior art could be modified does not make such a modification obvious absent suggestion of the desirability of doing so. *See, for example, In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In the present case, we fail to perceive any teaching, suggestion or incentive in the applied references which would have led one of ordinary skill

Appeal No. 2003-0252  
Application No. 09/207,634

in the art to modify the cart of Faraj system in the manner proposed by the examiner. It appears to us that the only suggestion for doing so is found in the hindsight accorded one who first viewed appellants' disclosure. This, of course, is not a proper basis for a rejection under 35 U.S.C. § 103. See *In re Fritch*, 972 F.2d 1260, 1264, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claims 5-8, 10, 20, 21 and 24-28 as being unpatentable over Faraj in view of White (rejection (1)), or claims 5-8, 10 and 20-28 as being unpatentable over Faraj in view of Brown (rejection (4)).

II. The 35 U.S.C. § 103(a) rejections further in view of Arias or Smith (rejections (2), (3), (5) and (6))

We have carefully reviewed the Arias and Smith references additionally relied upon by the examiner in rejections (2), (3), (5) and (6), but find nothing therein that makes up for the deficiencies of Faraj and either White or Brown discussed above. Accordingly, we also shall not sustain the standing rejection of claim 9 as being unpatentable over Faraj in view of White and Arias (rejection (2)), claims 12 and 14 as being unpatentable over Faraj in view of White and Smith (rejection (3)), claim 9 as being unpatentable over Faraj in view of Brown and Arias (rejection (5)),



Appeal No. 2003-0252  
Application No. 09/207,634

ALEX RHODES  
30100 TELEGRAPH ROAD STE 460  
BINGHAM FARMS, MI 48025



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## CHANGE OF CORRESPONDENCE ADDRESS Application

Address to:  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450.

Application Number	09/207,634
Filing Date	12/09/1998
First Named Inventor	Joseph J. Berke
Art Unit	3618
Examiner Name	Bridget Avery
Attorney Docket Number	1374-098

Please change the Correspondence Address for the above-identified patent application to:

☐ Customer Number :

OR

<input checked="" type="checkbox"/> Firm or Individual Name	Alex Rhodes				
Address	Unit No. 9				
Address	50168 Pontiac Trail				
City	Wixom	State	MI	Zip	48393-2019
Country	U.S.A.				
Telephone	248-669-0678	Fax	248-669-3694		

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:

- ☐ Applicant/Inventor
- ☐ Assignee of record of the entire interest.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).
- ☒ Attorney or Agent of record. Registration Number 26,797
- ☐ Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number \_\_\_\_\_

Typed or Printed  
Name

Alex Rhodes

Signature

*Alex Rhodes*

Date

June 21, 2004

Telephone 248-669-0678

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

EXHIBIT 2





RETURN RECEIPT CARD

Applicant: Joseph J. Berke  
Serial No. 09/207,634  
Filed: 12/09/1998  
Title: BAG CARRIER

Change of Correspondence Address

PLEASE DATE STAMP AND RETURN

Atty Docket No. 1374-098  
Mailed: June 21, 2004

RETURN RECEIPT CARD

Applicant: Joseph J. Berke  
Serial No. 09/207,634  
Filed: 12/09/1998  
Title: BAG CARRIER

Change of Correspondence Address

PLEASE DATE STAMP AND RETURN

Atty Docket No. 1374-098  
Mailed: June 21, 2004





UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/207,634	08/31/1998	JOSEPH J. BERKE	1374-098	7083

7590

08/31/2004

ALEX RHODES  
30100 TELEGRAPH ROAD STE 460  
BINGHAM FARMS, MI 48025

EXAMINER

AVERY, BRIDGET D

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary



Application No.

09/207,634

Applicant(s)

BERKE ET AL.

Examiner

Bridget Avery

Art Unit

3618

NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 5-14 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-10, 12, 14 and 20-28 is/are rejected.
- 7) ☐ Claim(s) 11 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. In response to the decision made by the Board of Appeals, mailed on May 12, 2004, a new ground of rejection on the merits of claims 5-14 and 20-28 follows.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5-8, 10, 20, 24, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (US Patent 4,160,557).

Taylor teaches the combination of a 2-wheel cart, a carrier mounted on an upper portion of the cart capable of transporting a closed bag or sack containing quantities of loose and granular products, such as sand and trash, the carrier having a pair of elongated jaws, and a means (it is inherent that the clamps are spring loaded) for clamping the jaws to and releasing the jaws from an upper portion of the closed bag or sack, and a handle attached to each of the jaws, as clearly shown in Figure 1. The cart has a selectively foldable lower shelf, as shown in Figure 2, for supporting the bag or sack. The carrier (66) is detachable from the 2-wheel cart. At least one of the jaws has a gripping surface (applicant's attention is directed to the surface engaging the upper bag support 50) for retaining and supporting the upper portion of the closed bag or sack.

Art Unit: 3618

3. Claims 5-7, 10, 20, 24, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Harmon et al. (US Patent 524,041).

Harmon et al. teaches the combination of a 2-wheel cart (1), a carrier (made of yokes/jaws 10, 13) mounted on an upper portion of the cart (1) capable of transporting a closed bag or sack (not shown, however clearly taught on lines 10, 13, 38, 40, 50, 54) containing quantities of loose and granular products, such as sand and trash, the carrier having a pair of elongated yokes/jaws (10, 13), and a means (one yoke/jaw pivoting to overlie the second yoke/jaw to hold the bag) for clamping the yokes/jaws (10, 13) to and releasing the yokes/jaws (10, 13) from an upper portion of the closed bag or sack, and a handle (14) attached to one of the yokes/jaws (10, 13), as clearly shown in Figures 1 and 2. The cart (1) has a lower shelf/bar (5), as shown in Figure 2, capable of supporting the bag or sack. The carrier (1) is detachable from the 2-wheel cart by removing fasteners in hinges (8) from the cross bar (6). At least one of the yokes/jaws (10, 13) has a gripping surface (applicant's attention is directed to the outer surface of yoke/jaw (10) and the inner surface of yoke/jaw (13)) for retaining and supporting the upper portion of the closed bag or sack.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor ('557) in view of Hull (US Patent 3,400,942).

Taylor teaches the features described above.

Taylor lacks the teaching of an outwardly adjustable shelf and a cart with a height that is adjustable.

Hull teaches a cart having an outwardly adjustable shelf and a cart with telescoping tubes to adjust the height of the cart.

Based on the teachings of Hull, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify the cart of Taylor to include a telescoping outwardly adjustable shelf to permit the transport of larger loads. It would have been obvious to provide the cart with telescoping tubes to adjust the height of the cart to accommodate users of various heights.

5. Claims 21-23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor ('557) in view of Cotey et al. (US Patent 5,009,657).

Taylor teaches the features described above.

Taylor lacks the teaching of a metal strip having a plurality of outward extending triangular tabs.

Cotey et al. teaches a clamping device including a metal strip having a plurality of outward extending triangular tabs.

Based on the teachings of Cotey et al., it would have been obvious to modify the clamp of Taylor to include a metal strip having a plurality of outward extending triangular

tabs to aid in securing the clamp to the bag and resisting slippage as the bag is being transported.

***Allowable Subject Matter***

6. Claims 11, 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

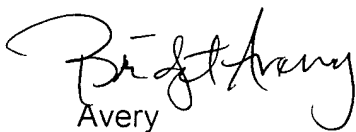
Shadwell shows a clamp.

D'Angelo shows a foldable golf cart.

Burskey shows an expansible cart.

Riccardi shows an umbilical clip.

8. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number 703-308-2086.

  
Avery

August 20, 2004

**Notice of References Cited**

Application/Control No.

09/207,634

Applicant(s)/Patent Under  
Reexamination  
BERKE ET AL.

Examiner

Bridget Avery

Art Unit

3618

Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-3,400,942	09-1968	HULL MARIE E	280/39
	B	US-5,009,657	04-1991	Cotey et al.	606/120
	C	US-3,879,813	04-1975	Shadwell, David William	24/455
	D	US-2,802,672	08-1957	D ANGELO EDWARD P	280/40
	E	US-2,718,404	09-1955	BURSEY MICHAEL A	280/659
	F	US-2,384,697	09-1945	PETER RICCARDI	606/120
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.





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PTO/SB/21 (02-04)  
Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/207,634	
	Filing Date	12/09/1998	
	First Named Inventor	Joseph J. Berke	
	Art Unit	3618	
	Examiner Name	Bridget Avery	
Total Number of Pages in This Submission	10	Attorney Docket Number	1374-098

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

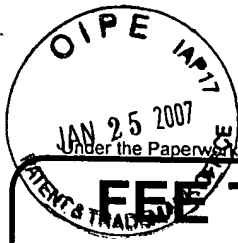
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Alex Rhodes, Reg. No. 26,797
Signature	
Date	November 30, 2004

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.	
Typed or printed name	Alex Rhodes
Signature	
Date	11/30/2004

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## for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

PTO/SB/17 (10-04v2)  
Approved for use through 07/31/2005. OMB 0651-0032  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 44.00

### Complete if Known

Application Number	09/207,634
Filing Date	12/09/1998
First Named Inventor	Joseph J. Berke
Examiner Name	Bridget Avery
Art Unit	3618
Attorney Docket No.	1374-098

### METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit Account Number  
Deposit Account Name

18-1166

Alex Rhodes

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

### FEE CALCULATION

#### 1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 790	2001 395	Utility filing fee	
1002 350	2002 175	Design filing fee	
1003 550	2003 275	Plant filing fee	
1004 790	2004 395	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$ )			

#### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims  - 20\*\* =  X  =   
Independent Claims  - 3\*\* =  X  =   
Multiple Dependent  =

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ ) 44.00

\*\*or number previously paid, if greater; For Reissues, see above

### FEE CALCULATION (continued)

#### 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for <i>ex parte</i> reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 490	Extension for reply within third month	
1254 1,530	2254 765	Extension for reply within fourth month	
1255 2,080	2255 1,040	Extension for reply within fifth month	
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,370	2453 685	Petition to revive - unintentional	
1501 1,370	2501 685	Utility issue fee (or reissue)	
1502 490	2502 245	Design issue fee	
1503 660	2503 330	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ )

### SUBMITTED BY

Name (Print/Type)	Alex Rhodes	Registration No. (Attorney/Agent)	26,797	Telephone	248-669-0678
Signature	<i>Alex Rhodes</i>	Date	11/30/2004		

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(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph J. Berke et al.

Atty Docket No. 1374-098

Serial No. 09/207,634

Group Art Unit: 3618

Filed: December 9, 1998

Examiner: Bridget Avery

For: **BAG CARRIER**

Confirmation No. 7083

Customer No. 26824

**AMENDMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a response to the Examiner's Office Action having a mailing date of August 31, 2004. Please amend the subject application as follows:

**IN THE CLAIMS:**

Amend claims 5, 11, 13, 14, and 24.

1. (cancelled)

2. (cancelled)

3. (cancelled)

4. (cancelled)

5. (currently amended) In combination with a cart for transporting closed bags or sacks, a bag carrier mounted on an upper portion of said cart for transporting gripping an upper portion of a closed bag or sack, said carrier having a pair of elongated jaws for gripping and supporting a closed upper portion of said bag or sack, and a means for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, and a handle attached to at least one of said jaws.

6. (original) The combination set forth in claim 5 wherein said cart is a 2-wheel cart.

7. (original) The combination set forth in claim 5 wherein said cart has a lower shelf for supporting said bag or sack.

8. (original) The combination set forth in claim 7 wherein said shelf is selectively

foldable from a vertical stored position to a horizontal load supporting position.

9. (previously amended) The combination set forth in claim 7 wherein said shelf is outwardly adjustable.

10. (original) The combination set forth in claim 5 wherein said carrier is detachable from said 2-wheel cart.

11. (currently amended) In combination with a cart, a carrier mounted on an upper portion of said cart for transporting a closed bag or sack, said carrier having a pair of elongated jaws, and a means for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, and a handle ~~attached to at least one of said jaws, wherein said handle is~~ pivotally connected to both of said jaws.

12. (original) The combination set forth in claim 5 wherein said cart has a height which is adjustable.

13. (currently amended) In combination with a cart for transporting closed bags or sacks, a bag carrier mounted on an upper portion of said cart for gripping an upper portion of a closed bag or sack, said carrier having a pair of elongated jaws for gripping and supporting a closed upper portion of said bag or sack, and a means for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, and a handle

attached to at least one of said jaws. ~~The combination set forth in claim 5 wherein said~~  
means for clamping said carrier to said bag or sack comprises a pair of bolts, each having  
one end portion pivotally attached to an end portion of one of said jaws and a thumb nut  
for engaging an opposite end portion of another of said jaws.

14. (currently amended) In combination, a 2-wheel cart for transporting closed  
bags or sacks, said cart having a tubular frame which is vertically adjustable, and a  
pivotable lower shelf portion attached to said frame which is selectably foldable from a  
vertical stored non-load supporting position to a horizontal load supporting position, and  
a carrier detachably mounted on an upper portion of said cart for transporting a closed bag  
or sack, said carrier having a pair of elongated jaws, each of said jaws having a gripping  
surface for clamping said jaws to and releasing said jaws from an upper portion of said  
closed bag or sack, a means for said clamping and releasing said jaws from said upper  
portion of said closed bag or sack, and a handle attached to said carrier.

15. (cancelled)

16. (cancelled)

17. (cancelled)

18. (cancelled)

19. (cancelled)

20. (previously amended) The combination set forth in claim 5 wherein at least one of said jaws has a gripping surface for retaining and supporting said upper portion of said closed bag or sack.

21. (previously amended) The combination set forth in claim 5 wherein said gripping surface of said jaw is comprised of a plurality of small outward extending portions for retaining and supporting said closed bag or sack.

22. (previously amended) The combination set forth in claim 5 further comprising a thin metal strip attached to at least one of said jaws, said metal strip having a plurality of outward extending tabs for forming a gripping surface to retain and support said closed bag or sack; a means for clamping said jaws to and releasing said jaws from said upper portion of said closed bag or sack; and a handle attached to said carrier.

23. (original) The combination as set forth in claim 22 wherein said outward extending tabs are triangular.

24. (currently amended) In combination, a cart having at least one pair of wheels for transporting said cart and a carrier mounted on said cart for gripping and supporting an upper portion of a closed bag or a sack on said cart, said carrier having a pair of jaws

for clamping said upper portion of said closed bag or sack to said carrier; and a means for said clamping and said releasing of said jaws from said upper portion of said closed bag or sack.

25. (original) The combination set forth in claim 24 wherein said carrier is detachably mounted on said cart.

26. (previously amended) The combination set forth in claim 24 wherein at least each of said jaws has a plurality of outward extending tabs for gripping said upper portion of said closed bag or sack.

27. (original) The combination set forth in claim 24 further comprising a handle attached to said carrier.

28. (previously amended) In combination, a cart having at least one pair of wheels for transporting said cart and a closed bag or sack supporting carrier mounted on said cart for supporting an upper portion of a large closed bag or a sack containing quantities of loose and granular products, such as sand and trash on said cart, said closed bag or sack supporting carrier being releasable from said cart and having a pair of jaws for clamping and releasing said upper portion of said closed bag or sack from said carrier to carry.



## REMARKS/ARGUMENTS

Reconsideration of the application is requested. The application is in a condition to be passed for allowance because of the following reasons.

Claim 11 was previously amended and allowed. Claim 13 has been re-written as an independent claim to meet the Examiner's requirement for allowance.

Answering paragraph 2, claims 5-8, 10, 20, 24, 25, 27 and 28 were rejected under 35 USC 102(b) as being anticipated by Taylor (US Patent 4,160,557). Taylor discloses a cart for carrying open top refuse bags (see Abstract, lines 1-2, col. 3, lines 48-56). The cart includes four clamps pivotally mounted on a tubular frame for gripping the edges of an open refuse bag. The pivotally mounted clamps are neither intended nor capable of supporting the weight of even a partially filled refuse bag (col. 1, lines 64-68).

Claims 5-8, 10, 20, 24, 25, 27 and 28 are directed to a cart for carrying closed bags or sacks. They are patentably distinguishable from Taylor by the positive limitations of a pair of elongated jaws for gripping and supporting a closed upper portion of said bag or sack and a handle attached to at least one of said jaws.

Answering paragraph 3, claims 5-7, 10, 20, 24, 25, 27 and 28 were rejected under 35 USC 102(b) as being anticipated by Harmon et al. (US Patent 524,041). Harmon discloses an open bag holder for clamping upper edges of an open bag between a pair of yokes (see column 2, lines 44-56). There are no provisions for clamping an upper portion of a bag or sack or for transporting a bag or sack. Claims 5-7, 10, 20, 24, 25, 27 and 28 are distinguishable under 35 USC 102(b) for the same reasons as paragraph 2.

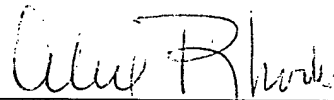
Answering paragraph 4, claims 9, 12 and 14 were rejected under 35 USC 103(a)

as being unpatentable over Taylor ('557) in view of Hull (US Patent 3,400,942). Hull discloses a luggage carrier with a collapsible lower frame assembly. Claims 9, 12 and 14 are directed to a luggage carrier having jaws with a plurality of outward extending tabs on metal strips for forming a gripping surface to retain and support a closed bag or sack.

Answering paragraph 5, claims 21-23 and 26 were rejected under 35 USC 103(a) as being unpatentable over Taylor ('557) in view of Cotey et al. (US Patent 5,009,657). Cotey is directed to the non-analogous art of umbilical cord cutting and clamping devices. Cotey would not have suggested the combination advanced by the Examiner which presumably involves incorporating the serrated jaws of Cotey into the carrier of Taylor. Nor is it understood how Cotey can be combined with Taylor.

In view of the above, it is respectfully requested that this case be passed to allowance.

Respectfully submitted,



---

Alex Rhodes Reg. No. 26,797  
Attorney of Record  
50168 Pontiac Trail, Unit No. 9  
Wixom, MI 48393-2019  
Tel: (248) 669-0678  
Fax: (248) 669-3694

Date: November 30, 2004

RETURN RECEIPT CARD



Applicant: Joseph J. Berke et al  
Serial No. 09/207,634  
Filed: 12/09/1998  
Title: BAG CARRIER

Amendment in response to Examiner's  
Office Action dated August 31, 2004,  
Fee Transmittal Form, \$44.00 check  
for additional independent claim,  
Transmittal Form and Certificate of  
Mailing.

PLEASE DATE STAMP AND RETURN

Atty Docket No. 1374-098  
Mailed: November 30, 2004

7273

**ALEX RHODES, P.C.**  
**ATTORNEY AT LAW**  
50168 PONTIAC TRL., UNIT 9  
WIXOM, MI 48393

DATE Nov. 30, 2004

9-91  
720 454

PAY TO THE ORDER OF Commissioner of Patents and Trademarks \$ 44.00

Forty-four and no/100 DOLLARS

**National City.**

National City Bank of Michigan/Illinois  
Detroit, Michigan

FOR (1) additional independent claim  
SN 09/207,634 - Joseph J. Berke

*Carmelina Inglese*

⑈00007273⑈ ⑆072000915⑆ 0001532597⑈

RETURN RECEIPT CARD

Applicant: Joseph J. Berke et al  
Serial No. 09/207,634  
Filed: 12/09/1998  
Title: BAG CARRIER

Amendment in response to Examiner's  
Office Action dated August 31, 2004,  
Fee Transmittal Form, \$44.00 check  
for additional independent claim,  
Transmittal Form and Certificate of  
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